

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

BOBBY SHANE CHARLTON,

Plaintiff,

6:09-cv-01246-TC

v.

ORDER

OREGON DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

COFFIN, Magistrate Judge.

In a Findings and Recommendation (#133) filed April 8, 2014, this court found that plaintiff did not exhaust his administrative remedies with respect to his claim against defendant Lytle - the sole claim remaining in this action, and recommended that defendants' Supplemental Motion to Dismiss (#119) be allowed. The Findings and Recommendation was adopted by the Order of Judge Aiken (#137) and by Judgment (#138) dated May 14, 2014, this action was dismissed.

Plaintiff appealed. Defendants' Motion for an Indicative

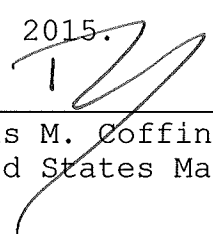
Ruling (#148) and Motion for a Limited Evidentiary Hearing (#149) were allowed and the appeal was stayed pending an evidentiary hearing on the limited fact issue of when the ODOC response to plaintiff's November 2008 grievance complaining about medical treatment by Dr. Lytle was delivered to plaintiff. Plaintiff claims that he did not receive the grievance response until he requested it in March, 2009.

On June 23, 2015, an evidentiary hearing was held on the limited issue described above. Plaintiff appeared via video conference call; testimony was given and documentary evidence was received.

I find that based on the evidence adduced at that hearing that defendants have proved by a preponderance of the evidence that S. Johnson's Grievance Response (defendants' Exhibit #2) to plaintiff's Grievance G-08-11-16 (defendants' Exhibit #1) was delivered to plaintiff in his cell (#047) in the Disciplinary Segregation Unit at Twin Rivers Correctional Institution on December 1, 2008.

Although plaintiff testified that he did not receive the grievance response until after making a request, on March 25, 2009, the witness testimony and documentary evidence of grievance and mail delivery protocols establish that the response was delivered to plaintiff on December 1, 2008, or at the latest, December 2, 2008.

DATED this 24 day of June, 2015.



Thomas M. Coffin
United States Magistrate Judge